

# IN THE UNITED STATES COURT OF FEDERAL CLAIMS

## OFFICE OF SPECIAL MASTERS

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JENNIFER HIBBARD,

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No. 07-446V

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Special Master Christian J. Moran

Petitioner,

\*

\*

v.

\*

Filed: September 26, 2013

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

\*

Attorneys' fees and costs; award  
in the amount to which  
respondent does not object

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\*

Respondent.

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\* \* \* \* \*

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for petitioner.

Glenn A. MacLeod, United States Department of Justice, Washington, D.C., for respondent.

### **UNPUBLISHED DECISION ON FEES AND COSTS<sup>1</sup>**

Jennifer Hibbard, petitioner, filed an unopposed application for final attorneys' fees and costs ("Application") on August 20, 2013. After discussions in a September 24, 2013 status conference, the Court awards the amount to which respondent does not object.

Petitioner claimed that the influenza vaccine caused her develop dysautonomia, a neurological condition. See Pet'r Br., filed June 21, 2010, at 1. A decision denying compensation was issued on April 12, 2011. 2011 WL 1766033 (Fed. Cl. Spec. Mstr.). The Court of Federal Claims issued an opinion and order, affirming the undersigned's decision and denying petitioner's motion for review. 100 Fed. Cl. 742 (2011). The Federal Circuit affirmed the denial of compensation. 698 F.3d 1355 (Fed. Cir. 2012).

Even though compensation was denied, a petitioner who brings her petition in good faith and who has a reasonable basis for the petition may be awarded attorneys' fees and costs. See 42 U.S.C. § 300aa-15(e)(1). As discussed during a September 24, 2013 status conference concerning petitioner's Application, counsel for petitioner spent considerable time and effort pursuing the petition—a pursuit which included multiple expert reports, two hearings, and an

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<sup>1</sup> The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

oral argument. Thus, because petitioner's counsel acted in good faith and there was a reasonable basis for proceeding, petitioner is eligible for an award of attorneys' fees and costs. Respondent does not contend that petitioner failed to satisfy these criteria.

Petitioner seeks a total of **\$100,000.00** in attorneys' fees and costs for petitioner's counsel. Additionally, in compliance with General Order No. 9, petitioner states that she incurred no reimbursable costs in pursuit of her claim. Respondent stated that she had no objection to petitioner's Application.

After reviewing the request, the court awards **\$100,000.00** in attorneys' fees and other litigation costs. The court thanks the parties for their cooperative efforts in resolving this matter.

The Clerk shall enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

s/Christian J. Moran  
Christian J. Moran  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.